IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition No.256 of 2007

Smt.V.S.Undirwadkar
since deceased through her legal heir
Shri Shantaram Y. Undirwadkar. .. .. Petitioner

v/s.

M/s.The Shivtirth Co-operative Housing
Soc. Ltd. & Seventeen ors. .. .. Respondents

Mr.Ajay S. Gadkari for Petitioner.

Ms.Bharti Navcharia i/by M/s.Vibha Jris Consult for all Respondents, except Res.Nos.4 & 8.

CORAM : ABHAY S. OKA, J.

DATED : 23rd April, 2007

P.C. :

1. By this Writ Petition under Article 227 of the Constitution of India, the Petitioner has taken exception to the order dated 22nd August 2006 passed by the Trial Court, by which Application at Exhibit-58 has been rejected. The Application at Exhibit-58 was filed by the present Petitioner claiming to be the legal representative of the original Plaintiff late Shantaram Yashwant Undirwadkar. The Suit was filed by the original Plaintiff for claiming damages and compensation on account of alleged publication of a false and defamatory Notice dated 1st April 2000, displayed on the Notice Board of the first Respondent Society. The Application made by the Petitioner was rejected by the impugned order by holding that in view of

the claim in the Suit, the right to sue does not survive after demise of the original Plaintiff.

2. The submission of the learned Advocate for the Petitioner is that looking to the averments made in the Plaint, and the nature of reliefs claimed, this was a case where the Petitioner should have been allowed to prosecute the suit filed by the original Plaintiff. He has invited my attention to various averments made in the Plaint. The learned Advocate for the contesting Respondents relying on certain decisions of the Apex Court, submitted that no interference was called for with the impugned order.

3. I have considered the submissions of both the parties. In my view, the case will be governed by the decision of the Apex Court in the case of **Melepurath S. Ezhuthassan vs. Thekittil Geopalankutty Nair reported in AIR 1986 S.C. 411**. In the present case, the claim for damages is on account of alleged defamation. The Apex Court in the aforesaid case, after considering the provisions of Section 306 of the Indian Succession Act, 1925, held that in such a Suit the cause of action does not survive after the death of the original Plaintiff and the right to sue does not survive. In view of the pronouncement of law by the Apex Court, I find no error in the impugned order. No case is made out for interference of the Writ Petition under Article 227 of the Constitution of India.

4. In the above circumstances, the Writ Petition is rejected. No order as to costs.

(ABHAY S. OKA, J.)